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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,149	11/04/2003	Herbert Gerlach	047777/271178	5498
826	7590	01/14/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			MAYES, MELVIN C	
		ART UNIT		PAPER NUMBER
				1734

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/701,149	GERLACH, HERBERT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Melvin Curtis Mayes	1734	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 16-26 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 11-3/04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

(1)

Applicant's election without traverse of Claims 1-15 in the reply filed on November 11, 2004 is acknowledged.

***Specification***

(2)

The disclosure is objected to because of the following informalities: reference to the claims, such as on page 2, should be deleted.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

(3)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(4)

Claims 4-6 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the transverse seal" in line 1. There is insufficient antecedent basis for this limitation in the claim. Transverse seal is claimed in Claims 2 and 3.

Claim 5 recites the limitation "the binder." There is insufficient antecedent basis for this limitation in the claim. Binder is claimed in Claims 2 and 3.

Claim 6 recites the limitation "the seal" in line 2. There is insufficient antecedent basis for this limitation in the claim. A seal is claimed in Claims 2-4.

Claim 6 recites the limitation "the binder." There is insufficient antecedent basis for this limitation in the claim. Binder is claimed in Claims 2, 3 and 5.

Claim 15 claims "or in place thereof" but depends from Claim 1 which claims applying the powder layer. If by "or in place thereof" that the powder layer of Claim 1 is not applied but instead a different material is applied, then Claim 15 does not further limit Claim 1. Claim 15 could read "with the powder layer, a material of different...is applied."

***Claim Rejections - 35 USC § 102***

(5)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(6)

Claims 1, 8, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Pedigrew 4,675,209.

Pedigrew discloses a method of making a laminate for hygienic articles such as diapers comprising: applying adhesive to a core stratum in defined areas; applying absorbent particle

material onto the core stratum in the areas of the adhesive; removing from the core stratum, via suction, absorbent particles which have not adhered to the adhesive and particles which lie on the core stratum outside the adhesive areas, thus forming sharply defined areas of absorbent particle material on the core stratum; combining the core stratum with a protector sheet and cover layer; and cutting between the defined areas to form individual articles (col. 3-6).

(7)

Claims 1, 2 and 4-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Heath et al. 5,494,622.

Heath et al. disclose a method of making an absorbent structure such as a diaper comprising: supplying a carrier layer; applying particles of high-absorbency material to pocket regions of the carrier layer; clearing (removing), via a sweeping means, particles from intermediate sections located between the pocket regions; applying, to a covering layer, continuous side attachment (longitudinal) regions and intermittent longitudinally-spaced (transverse) medial attachment regions of adhesive; adhering the covering layer to the carrier layer and sandwich the pocket regions to form a composite web; laminating the composite web with a layer of distribution material; cutting the laminate into pads; laminating the pads between a topsheet web and backsheet web to produce an article web; and dividing the article web into individual articles (col. 3-16).

***Claim Rejections - 35 USC § 103***

(8)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

(9)

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedigrew as applied to Claim 1, further in view of Erspanner et al. 2002/0013560.

Erspanner et al. teach that in making an absorbent structure such as a diaper, functional particles for use in the absorbent core include particles which serve as absorbents, odor control agents, fragrances, detergent, antimicrobial agent and the like [0058].

It would have been obvious to one of ordinary skill in the art to have modified the method of Pedigrew for making an absorbent laminate for a diaper by providing in addition to the absorbent particle material, particles of odor control agent and/or detergent, as taught by Erspanner et al., as functional particles provided in the absorbent core of absorbent structures

such as diapers. Providing functional particles of odor-control agent and/or detergent with the absorbent particles in the adhesive areas of Pedigrew would have been obvious to one of ordinary skill in the art, as taught by Erspanner et al., as functional particulate material used in the absorbent cores of absorbent structures such as diapers.

(10)

Claims 3 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath et al. as applied to Claim 1, further in view of Erspanner et al. 2002/0013560.

Erspanner et al. teach that in making an absorbent structure such as a diaper, functional particles for use in the absorbent core include particles which serve as absorbents, odor control agents, fragrances, detergent, antimicrobial agent and the like [0058].

It would have been obvious to one of ordinary skill in the art to have modified the method of Heath et al. for making an absorbent structure such as a diaper by providing in addition to the absorbent particle material, particles of odor control agent and/or detergent, as taught by Erspanner et al., as functional particles provided in the absorbent core of absorbent structures such as diapers. Providing functional particles of odor-control agent and/or detergent with the absorbent particles in the pocket regions of Heath et al. would have been obvious to one of ordinary skill in the art, as taught by Erspanner et al., as functional particulate material used in the absorbent cores of absorbent structures such as diapers.

Applying either of the longitudinal continuous side attachment adhesive or the transverse intermittent longitudinally-spaced medial attachment regions of adhesive to either of the carrier layer (first layer) or cover layer (second layer), instead of both to the cover layer, would have

been obvious to one of ordinary skill in the art to provide adhesive for adhering the carrier and cover layers.

***Conclusion***

(11)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references disclose making laminates with particulate material and disclose providing odor-control agent or detergent in absorbent structures.

(12)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melvin Cumis Mayes  
Primary Examiner  
Art Unit 1734

MCM  
January 12, 2005